laws that provide similar standards.[6] The FCC's approach calls for a portion of common costs to be included in the pricing of interconnection items. Under Michigan law, until January 1, 1997 common costs are not considered. [See Section 352 of the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq; MSA 22.1469(101) et seq. (the MTA)]. However, because Section 352 of the MTA also provides that, effective January 1, 1997, prices shall be determined pursuant to a just and reasonable pricing standard with regard to interconnection services, the only clearly defined difference between the state and federal methodologies will have a very limited effect on rates.

Moreover, the panel proposed that if the Commission's ultimate determinations in Cases Nos. U-11155 and U-11156, or on Ameritech Michigan's Advice No. 2438(B), support any different pricing conclusions for services addressed in this proceeding, such changes should be incorporated into the interconnection agreement. Additionally, the arbitration panel made a similar recommendation with respect to any changes that result from the FCC or the Commission revisiting the topic of pricing of local interconnection services in the near future.

In light of the arbitration panel's recommendations, the Commission is not persuaded that the panel's findings violate state or federal law or unconstitutionally take Ameritech Michigan's property without just compensation. The interim rates adopted by the arbitration panel are its best estimate of Ameritech Michigan's costs as determined by TSLRIC data. The Commission seriously doubts Ameritech Michigan's claim that approval of the arbitration panel's decision

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[6]The arbitration panel found that the only significant difference between the state and federal methodologies in the pricing of local interconnection services involves the treatment of common costs.

will jeopardize its financial integrity. Certainly, there is nothing in this proceeding to support that contention. Accordingly, Ameritech Michigan's objections to Issue 1 are rejected.

The only Issue 1 pricing concern raised by AT&T involves collocation prices. The arbitration panel determined that Ameritech Michigan's existing FCC tariff rates for collocation should be incorporated into the interconnection agreement. AT&T maintains that its proposal for collocation prices was developed on the basis of Ameritech Michigan's actual costs of providing collocation. According to AT&T, use of the existing interstate tariffed rates for collocation is unreasonable because those rates were developed by the FCC through use of a fully distributed cost methodology that incorporates excessive overhead loadings. AT&T stesses that the FCC suspended Ameritech Michigan's most recent collocation tariffs because the rates appeared to be excessive. In any event, AT&T urges the Commission to specify that the rate that is adopted should be applied only on an interim basis. According to AT&T, Ameritech Michigan's costs of collocation should be subject to review, with the interim rates being replaced as soon as more competitive prices are determined through properly conducted cost studies.

The Commission finds that AT&T's objection to the use of Ameritech Michigan's existing interstate rates for collocation should be rejected. It makes little sense to adopt a new rate for collocation when an existing tariffed rate exits for essentially the same service. Accordingly, AT&T's objection to the collocation pricing issue is rejected.

With regard to Issue 2, which involves a determination of the wholesale discount applicable to purchases by AT&T for resale to its retail customers, Ameritech Michigan argues that the arbitration panel's determination to adopt AT&T's proposed 25% discount is flawed. According to Ameritech Michigan, the arbitration panel misunderstood Ameritech Michigan's method-

ology, which it claims is superior to AT&T's unsupported estimate. Indeed, stressing that AT&T's initial position called for a discount in excess of 40%, Ameritech Michigan argues that its rates should be adopted by the Commission because they are supported by its avoided cost study, not guesswork.

The Commission finds that the arbitration panel should not have adopted AT&T's 25% wholesale discount rate. In reaching its determination, the arbitration panel recognized that "the most reliable discount probably lies somewhere between Ameritech's 13% and AT&T's 41.1% based on its Avoided Cost Model." Decision of the Arbitration Panel, p. 26. The Commission is persuaded that, after citing potential flaws in the approaches taken by the parties and in light of the parties' adherence to extreme positions, the arbitration panel should have abandoned the inflexible "baseball-style" arbitration selection process, which it was allowed to do pursuant to the directives in the July 16, 1996 order in Case No. U-11134, in favor of a more acceptable option on this issue. Indeed, in its First Report and Order,[7] the FCC proposed a wholesale rate discount in the range of 17% to 25%. Accordingly, implementation of a 25% discount rate constitutes adherence to a rate at the highest end of the range of rates, despite evidence that the majority of the wholesale discount rates considered appropriate by the FCC actually fell between 18.74% and 21.11%[8].

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[7]First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, 61 Fed. Reg. 45476 (1996) (codified in 47 CFR pts. 1, 20, 51, and 90), stayed in part pending appeal in Iowa Utilities Board v Federal Communications Comm, decided October 15, 1996 (CA 8, Docket No. 96-3321 et al.).

[8]First Report and Order, supra, paragraph 933, page 470.

The Commission finds that it would be more appropriate to use a wholesale discount rate of 22% in the interconnection agreement. A discount rate of 22% is reasonable because it is temporary and because it lies closer to wholesale discount rates that were previously determined in two states that explicitly applied Section 252(d)(3) of the FTA in reaching their decisions.[9] Accordingly, the Commission finds that the discount rate of 22% is appropriate and should be incorporated into the interconnection agreement.[10]

Finally, Issue 49 involves an effort by the parties to predetermine whether changes in the contract prices should be applied retroactively or prospectively.[11] Ameritech Michigan urges adoption of contract language that would make price changes fully retroactive to the effective date of the contract. On the other hand, AT&T proposes to reserve each party's rights and remedies with respect to the collection of rates or charges on a retroactive or prospective basis.

In its objections, Ameritech Michigan concedes that Congress and the FCC have authority to direct whether or not a subsequent change should be applied retroactively or prospectively. Accordingly, Ameritech Michigan insists that it is necessary to incorporate language in the arbitration agreement that determines whether prices will be applied retroactively or prospectively in the event that the pricing rules are changed by a statute or an order that is silent on the

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[9]See paragraph 898 of the First Report and Order, supra, page 457, wherein the FCC noted that the states of Georgia and Illinois derived average wholesale discounts of 18.74% and 20.07%, respectively.

[10]AT&T also proposed use of volume discounts, which were rejected by the arbitration panel based on its finding that volume discounts have no basis or relationship to possible avoided costs. The Commission agrees with this determination.

[11]This issue applies to two sections of the arbitration agreement. Section 29.3 refers to contract price changes that are made to conform with a change in the FTA or the FCC's pricing rules. Section 29.5 specifically relates to the replacement of interim prices by permanent rates.

subject. The Commission disagrees. There is no basis for Ameritech Michigan's position that new rates should always be applied retroactively to the effective date of the interconnection agreement, whether established by legislative or regulatory action. Adoption of AT&T's proposal with regard to the retroactivity of rate changes ensures the parties an opportunity to address whether rates should be applied retroactively or prospectively at the time the rate change is being determined. Accordingly, the Commission finds that the arbitration panel's decision on Issue 49 should be approved.

Availability of Interconnection, Service, or Network Elements

Issue 54 concerns an effort by the parties to incorporate their interpretations of Section 252(i) of the FTA, which requires a local exchange carrier to make available any interconnection, service, or network element provided under an agreement approved pursuant to Section 252 of the FTA to which it is a party to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement.

AT&T insists that Section 252(i) should be interpreted to mean that AT&T is entitled to retain (1) any unrelated term or condition of its interconnection agreement and (2) any provision of the agreement that relates to the processes, procedures, and systems for interconnection services that were implemented by the parties in the event that AT&T elects to adopt an individual interconnection, service, or network element arrangement contained in an agreement between AT&T and a third-party. On the other hand, Ameritech Michigan argues that the interconnection agreement should contain a provision that denies AT&T the right to avail itself of any arrangement in an agreement between Ameritech Michigan and a third-party if Ameritech Michigan demonstrates to the Commission that it would incur greater costs to provide the

arrangement to AT&T than Ameritech Michigan incurred to provide the arrangement to the third-party.

Each party offered language supporting its position on this issue to be incorporated as Section 30.13 of the interconnection agreement. The arbitration panel found that AT&T's proposed language should be adopted. Ameritech Michigan objects. According to Ameritech Michigan, the law and common sense require that AT&T must adopt the terms and conditions of an entire interconnection, service, or network element arrangement in another agreement as a package. Ameritech Michigan insists that Section 252(i) should not be interpreted to allow AT&T to pluck an individual term or condition from another interconnection agreement and simply plug it into its own interconnection agreement. In the alternative, Ameritech Michigan argues that the Commission could adopt neither party's language and allow them to pursue their differing interpretations of Section 252(i).

The Commission is persuaded that Ameritech Michigan's alternative resolution of this issue is appropriate and should be adopted. The proper interpretation of Section 252(i) of the FTA is a major issue that does not need to be addressed at this time. This is particularly true in light of the expedited nature of the interconnection agreement approval process. Therefore, Section 30.13 of the interconnection agreement should be excised.

Transiting

Transiting refers to the delivery of traffic between AT&T and a third-party local exchange carrier (LEC) by Ameritech Michigan through use of Ameritech Michigan's switches and local/ intraLATA trunks. Ameritech Michigan insists that nothing in the FTA or the FCC's First Report and Order requires it to provide transiting service. While Ameritech Michigan is willing

to negotiate with AT&T for the provision of transiting service at commercially reasonable rates, terms, and conditions that have short-term applicability, it disagrees with the arbitration panel's determination that Ameritech Michigan is required by the FTA to provide transiting service to AT&T indefinitely.

The Commission finds that Ameritech Michigan's objection to the arbitration panel's determination regarding Issue 4 should be rejected. As the arbitration panel recognized, absent transiting, new competitors would face a significant barrier to entry due to their inability to simultaneously interconnect with every other LEC. Further, given that an important purpose of the FTA is to encourage the development of competition in local exchange markets, the Commission is not persuaded that the FTA should be interpreted to allow Ameritech Michigan to refuse to perform transiting services. Indeed, nothing in the FTA suggests that Ameritech Michigan may refuse to resell any element, function, or group of elements and functions to AT&T for use in the transmission, routing, or other provision of the telecommunications service simply because a direct interconnection with AT&T and another telecommunications provider might obviate the necessity for Ameritech Michigan to perform transiting service. For a competitive marketplace to flourish, new entrants must be able to provide service to customers in an economically viable manner. Because Ameritech Michigan's proposed language creates a barrier to competition, the Commission finds the arbitration panel properly rejected it.

Directories

Issues 22 and 23 of the arbitration panel's decision concern matters related to telephone directories. In Issue 22, the parties were unable to agree whether Ameritech Michigan's obligation pursuant to Section 251(b)(3) of the FTA, which requires nondiscriminatory access to

directory listings, extends to both Ameritech Michigan's white and yellow pages directories. Additionally, the parties could not agree whether Ameritech Michigan has an obligation to deliver yellow pages directories to AT&T subscribers and whether AT&T has a right to have its customer contact information published in the informational pages at the beginning of Ameritech Michigan's directories. Issue 23 relates to whether AT&T should deal directly with Ameritech Michigan or the publisher of Ameritech Michigan's directories.

Subject to one exception, the arbitration panel adopted AT&T's positions on these issues.[12] After reviewing Ameritech Michigan's objections to the arbitration panel's determinations, the Commission finds that two revisions are appropriate.

First, the Commission finds that the arbitration panel's determination regarding Section 15.1 of the interconnection agreement should be reversed. AT&T had proposed that primary listings of AT&T's customers should be included in Ameritech Michigan's white and yellow pages directories. Ameritech Michigan proposed that such listings should be limited to its white pages directories.

In Section 251(b)(3) of the FTA, a duty is imposed on all LECs to permit competitive providers to have nondiscriminatory access to directory listings. In Section 271(c)(2)(B)(viii), Congress indicated that a Regional Bell Operating Company (RBOC) can comply with the so-called competitive checklist requirements if its interconnection agreement includes a provision permitting the customers of competing carriers to have white pages directory listings in the RBOC directories. The Commission finds that Section 271(c)(2)(B)(viii) undermines AT&T's

[12]The arbitration panel found that Section 15.2.5 of the contract language proposed by AT&T should be amended to specify that Ameritech Michigan's obligation to distribute directories extends only to AT&T's resale customers.

argument that the FTA requires Ameritech Michigan to permit access to both its white and yellow pages directories. Accordingly, Ameritech Michigan's position on Section 15.1 of the arbitration agreement should be adopted.

Second, the Commission finds that the arbitration panel's determination regarding Section 15.2.5 of the interconnection agreement should be reversed. The arbitration panel adopted AT&T's proposed language for this section. Ameritech Michigan argued that the FTA does not require Ameritech Michigan to deliver yellow pages directories to AT&T's customers. The Commission agrees. Because there is no obligation under either the FTA or the MTA requiring Ameritech Michigan to publish yellow pages directories, the Commission agrees that it should not compel Ameritech Michigan to distribute its yellow pages directories to the customers of competing LECs. Obviously, the parties are free to reach an agreement on this issue. Therefore, the Commission agrees with Ameritech Michigan that inclusion of AT&T's proposed language for Section 15.2.5 of the interconnection agreement should be rejected.[13]

However, the Commission is not persuaded that Ameritech Michigan's objection to the inclusion of information about AT&T services, including addresses and telephone numbers for customer service, in the informational pages at the beginning of Ameritech Michigan's white and yellow pages directories should be adopted. The arbitration panel recommended adoption of AT&T's proposed language. For the reasons stated in the panel's decision, the Commission agrees.

[13]Rejection of AT&T's proposed language for Section 15.2.5 of the interconnection agreement renders Ameritech Michigan's objection to Issue 23 moot.

Access to Ameritech Michigan's Real Property

Issue 24 involves a dispute over Section 16.1.1 of the interconnection agreement. The arbitration panel adopted AT&T's proposal on this issue. According to the arbitration panel, the term "right-of-way" should not be interpreted to be limited to real estate owned by third-parties. Rather, the arbitration panel expressed its belief that Section 224(f)(1) of the FTA requires Ameritech Michigan to grant AT&T access to any property owned, leased, or otherwise controlled by Ameritech Michigan.

In its objections, Ameritech Michigan argues that the arbitration panel's acceptance of AT&T's language for Section 16.1.1 of the interconnection agreement goes too far. According to Ameritech Michigan, the term "right-of-way" has a clear meaning under the law and is limited to its existing rights-of-way over the land of third-parties. Therefore, Ameritech Michigan insists that nothing in the FTA obligates it to create new rights-of-way across its own property. Indeed, Ameritech Michigan insists that Congress could not have intended to grant requesting carriers access to all land owned by incumbent LECs simply because such land might be suitable for distribution facilities. Rather, Ameritech Michigan argues that Section 16.1.1 of the arbitration agreement should be limited to ensure access to only "poles, ducts, conduits, and other rights-of-way," not the broader "pathways" contemplated by AT&T's position.

Section 251(b)(4) of the FTA requires all telecommunication carriers to afford access to their poles, ducts, conduits, and rights-of-way to competitors on rates, terms, and conditions that are consistent with Section 224 of the FTA. However, Section 224(c)(1) of the FTA provides that the FCC shall lack jurisdiction with respect to the determination of the rates,

terms, and conditions for access to poles, ducts, conduits, and rights-of-way in any case where such matters are regulated by a state.

Section 361 of the MTA sets forth Michigan's current regulatory scheme for access to structure, which is remarkably similar to the statutory scheme set forth in Section 224 of the FTA. Accordingly, the Commission finds that its decision should be guided by federal and state law on this issue.

Subject to one modification, the Commission is persuaded that the arbitration panel's adoption of AT&T language for Section 16.1.1 of the contract is appropriate. According to AT&T's proposal, the term "rights-of-way" is defined to include "easements, licenses, or any other right, whether based upon grant, reservation, contract, law or otherwise, to use property suitable for distribution facilities but does not include property owned or leased by Ameritech Michigan which is not used or suitable for distribution facilities such as business offices or corporate offices." The Commission agrees with Ameritech Michigan that this definition should be revised slightly to clarify that Ameritech Michigan is not obligated to create new rights-of-way across its own property. Accordingly, Section 16.1.1 of the arbitration agreement should define "rights-of-way" to include easements, licenses, or any other right, whether based upon grant, reservation, contract, law or otherwise, to use property if the property is used for distribution facilities.

Indemnification and Limitation of Liability

Issues 41, 42, 43, and 44 are related to the concepts of indemnification and limitation of liability. The arbitration panel adopted AT&T's proposals with regard to Issues 41, 42, and 44, but opted for Ameritech Michigan's language on Issue 43. Both Ameritech Michigan and

AT&T raise objections to the arbitration panel's decisions. With regard to Issue 41, Ameritech Michigan maintains that its proposal for Section 25.1(a) is more appropriate because it is not limited to circumstances where the conduct that caused the loss was within the scope of employment of the individual whose conduct caused the loss. According to Ameritech Michigan, the problem with AT&T's proposal is that it constitutes nothing more than an attempt to specify in the contract the circumstances under which a company might incur a loss to a third-party. Ameritech Michigan insists that a better approach is to ensure that Ameritech Michigan's duty to indemnify AT&T exactly parallels AT&T's exposure to its customer due to the conduct of Ameritech Michigan's employee.

With regard to Issue 42, Ameritech Michigan argues that the panel's adoption of AT&T's proposed language for Section 12.7 of the agreement constitutes an attempt to force Ameritech Michigan to demonstrate fault in circumstances where the acts are in the exclusive control and knowledge of AT&T.

In Issue 43, AT&T maintains that its proposed language in Section 26.3.1 of the interconnection agreement is intended to make Ameritech Michigan's liability to AT&T coextensive with AT&T's liability to its own customers. Additionally, AT&T maintains that Ameritech Michigan's position is nonsensical in situations where the damages arise out of conduct that is not associated with a service rendered for a fee.

Finally, Issue 44 involves Ameritech Michigan's argument that the language proposed for Section 6.5.2 should contain a $10,000 limitation on liability in recognition that neither party is being compensated for services rendered under Article VI of the interconnection agreement.

In its November 1, 1996 order in Case No. U-11138, the Commission was faced with similar issues in the arbitrated interconnection agreement between TCG Detroit and Ameritech Michigan. The Commission was persuaded that neither party's final offer with regard to indemnification constituted an acceptable term or condition for their interconnection agreement. Further, the Commission was persuaded that it should not attempt to rewrite either party's indemnification offer. Therefore, it concluded that both must be rejected.

The Commission finds that the indemnification and limitation of liability proposals supported by the parties in this proceeding are also unacceptable. Both offers could create perverse incentives that will cause providers to overbuild their networks as a means of providing security against service outages, even if the duplicative facilities would not be economically efficient. Additionally, the parties may be induced to compete for customers by offering them better guarantees of performance than can be economically justified. Further, the indemnification and limitation of liability provisions may discourage customers from seeking to improve the quality of service offered to them by competing carriers. Finally, the Commission is persuaded that provisions that may lead to discriminatory concessions in favor of selected customers or against disfavored providers are incompatible with the competitive market and the purposes of the MTA.

Because the Commission does not wish to delay the process of interconnection, it will approve the agreement without the indemnification and limitation of liability provisions. However, because some indemnification and limitation of liability provisions are needed to make the interconnection agreement work efficiently, the Commission directs the parties to resume negotiations on these issues and to resubmit proposals to the Commission within 30

days. If the parties are able to agree on the indemnification and limitation of liability provisions, they should jointly submit them to the Commission. Otherwise, they should each submit their best offer, keeping in mind that their offers must be more reasonable than the offers to date and must also be compatible with the purposes and policies of the FTA and the MTA.

Standards of Performance

In resolving Issue 7, which concerns standards of performance, the arbitration panel recognized that Ameritech Michigan and AT&T were able to reach agreement on the standards of performance that will be utilized and measured in regard to network interconnection and the resale of network components. Expressing hope that the parties would be able to resolve issues regarding standards of performance in other areas including unbundled network components, collocation, and rights-of-way, the arbitration panel deferred making determinations on these issues in favor of having a resolution developed by the implementation team within the parameters of the implementation plan, as proposed by AT&T.

In its objections, Ameritech Michigan argues that the arbitration panel erred by deferring performance standard issues to the implementation team. Ameritech Michigan also argues that the arbitration panel erred by determining that the alternative dispute resolution process would be the proper forum for resolving disputes concerning compliance with performance standards. According to Ameritech Michigan, the arbitration panel improperly elevated the implementation team from the role of generally providing technical and operational coordination between the parties to the role of developing and applying performance benchmarks. Ameritech Michigan insists that the implementation team is ill-suited for this task.

Ameritech Michigan also insists that the panel erred in adopting many of AT&T's performance benchmarks. According to Ameritech Michigan, due to the custom nature of network element provisioning, interval categories will vary from order to order on the same element, and will have to be negotiated. Further, Ameritech Michigan argues that the panel erred in recommending resolution of performance standards through the dispute resolution process in Section 28.3 of the arbitration agreement. According to Ameritech Michigan, a better resolution would permit a party aggrieved by a performance breach to bring an action in federal District Court or to file a complaint with the Commission or the FCC.

The Commission is not persuaded that either party's final offer in the area of performance standards constitutes an acceptable provision for the interconnection agreement. Ameritech Michigan and AT&T are major providers of telecommunication services. Each is aggressively moving to enter the other's area of dominance and it can be reasonably anticipated that each will aggressively pursue the other's customers. Accordingly, the Commission foresees the likelihood that standards of performance will play an important part in the relationship between the parties. For that reason, the Commission will not attempt to rewrite either party's final offers regarding standards of performance. Rather, because the Commission does not wish to delay the process of interconnection, it will approve the agreement without specific standards of performance. The Commission recognizes that such provisions will be needed to make the interconnection agreement work efficiently. Accordingly, the Commission directs the parties to resume negotiations on these issues and to resubmit proposals within 30 days. If the parties are able to agree on standards of performance, they should submit them jointly. If the parties are unable to reach agreement, the Commission finds that the parties should adopt provisions for performance stan-

dards that are consistent with the standards for performance in the interconnection agreements between Ameritech Michigan and Brooks Fiber Communications of Michigan, Inc., and TCG Detroit.[14]

Alternative Dispute Resolution

In Issue 45, Ameritech Michigan maintains that the arbitration panel improperly adopted AT&T's proposed language for establishing an alternative dispute resolution mechanism. According to Ameritech Michigan, AT&T's proposal involves a complex, nine-page arrangement that is not required by law. Ameritech Michigan is particularly distressed that an independent arbitrator, not the FCC nor the Commission, would be required by AT&T's proposal. Ameritech Michigan urges the Commission to recognize the special expertise that regulatory agencies have in these types of matters.

In Issue 48, Ameritech Michigan claims that the arbitration panel erred in adopting AT&T's proposed language, which provides that if the parties are unable to agree upon provisions in their interconnection tariffs, then the dispute resolution process should be used to establish tariff provisions. Specifically, Ameritech Michigan argues that AT&T's proposed language in Section 29.2 of the interconnection agreement should be rejected. According to Ameritech Michigan, if there are disputes with regard to tariffs, they should be resolved by the Commission, not a private arbitrator.

The Commission finds that Ameritech Michigan's positions on Issues 45 and 48 should be adopted. Creating an unnecessary layer in the dispute resolution process, which would occur if

[14]The Commission approved the interconnection agreements for these companies in its November 26, 1996 order in Case No. U-11178 and in its November 1, 1996 order in Case No. U-11138, respectively.

AT&T's proposed language for Section 28.3.2 of the arbitration agreement were to be adopted, delays the ultimate resolution of issues under the interconnection agreement and exposes the parties to additional costs associated with the hiring of an independent arbitrator.

Standard Offers

Issue 10 concerns the arbitration panel's finding that Ameritech Michigan should be required to offer a combination entitled "Unbundled Element Platform Without Operator Services and Directory Assistance" as a standard offering in the party's interconnection agreement. The arbitration panel recommended adoption of AT&T's proposed contract language in Section 9.3.4 and Schedule 9.3.4 on this issue.

In its objections, Ameritech Michigan argues that the interconnection agreement should allow Ameritech Michigan to offer this combination via the "bona fide request" process. According to Ameritech Michigan, there are unresolved technical issues associated with the unbundling of operator services and directory assistance. Indeed, Ameritech Michigan insists that other undisputed contract provisions reflect an understanding that problems still need to be worked out regarding the routing and branding of operator services and directory assistance. Citing Section 10.10.2 of the agreement, Ameritech Michigan points out that it is required to provide selective routing of operator services and directory assistance only to the extent that it is technically feasible to do so. Moreover, given that the Unbundled Element Platform Without Operator Services and Directory Assistance entails selective routing and branding, Ameritech Michigan insists that it should not be required to make a standard offer on a "one size fits all" basis. Rather, Ameritech Michigan maintains that the combination should be available only through a bona fide request, which will allow for the identification and resolution of the out-

standing technical issues. Finally, Ameritech contends that, even assuming that operator services and directory assistance routing or branding is technically feasible in all instances, the technical routing or branding solution may vary from switch to switch, which will cause the cost of the combination to vary on a switch-by-switch basis. Because such a variance in costs suggests that the combination should not be provided as a standard offer, Ameritech Michigan insists that its position that the combination should be available through a bona fide request is the only reasonable alternative on this record.

The Commission finds that Ameritech Michigan's position on Issue 10 should be adopted. The arbitration panel rejected Ameritech Michigan position on this issue primarily because the panel felt that Ameritech Michigan had not demonstrated that the offering was not technically feasible. However, as pointed out by Ameritech Michigan, the interconnection agreement contains examples of the parties' shared understanding that there are unresolved technical issues. As pointed out in its objections, Section 10.10.2 of the interconnection agreement and Section 8.9 of Schedule 9.5 reflect the parties' understanding that technical feasibility is a legitimate concern in Ameritech Michigan's ability to provide the combination. Moreover, the Commission is concerned that the cost of the combination could vary on a switch-by-switch basis. Accordingly, the Commission finds that the Unbundled Element Platform Without Operator Services and Directory Assistance should be offered through a bona fide request and not as a standard offering.

Gross Receipts Tax

Both parties proposed language regarding the liability for payment of taxes. They were unable to agree on the issue of liability for payment of taxes levied on gross receipts.

The arbitration panel adopted AT&T's proposed tax language, which provides for each party to be responsible for any tax imposed on its gross receipts. Ameritech Michigan objected to this determination. According to Ameritech Michigan, AT&T's proposed language for Section 30.7 of the interconnection arbitration agreement makes little sense and is economically irrational. According to Ameritech Michigan, AT&T's proposal could result in Ameritech Michigan being denied an opportunity to fully recover its costs.

The Commission finds that Ameritech Michigan's proposed language for Section 30.7 of the arbitration agreement is preferable to AT&T's language. In comparison, Ameritech Michigan's proposal appears to avoid the unfairness of AT&T's proposal. Moreover, Ameritech Michigan's proposal seems more consistent with the FTA and principles of Michigan tax law. Section 252(d) of the FTA permits Ameritech Michigan to recover all costs of providing services and elements. The taxes paid by Ameritech Michigan are among the expenses that it is permitted to fully recover. Accordingly, the Commission finds that Ameritech Michigan's proposed language for Section 30.7 should be adopted.

Publicity Clause

The arbitration panel found that the interconnection agreement should include AT&T's proposed Section 30.11 that would prevent Ameritech Michigan from engaging in any sort of advertising or marketing effort that would disclose that Ameritech Michigan is providing service to AT&T or that AT&T is reselling Ameritech Michigan's services. According to the arbitration panel, inclusion of this prohibition on advertising and marketing would promote competition because Ameritech Michigan would be barred from undermining efforts to develop competition.

Ameritech Michigan argues that AT&T's proposed publicity clause violates its First Amendment right to free speech. According to Ameritech Michigan, it is well settled that truthful commercial speech enjoys a wide degree of First Amendment protection and that restrictions on such speech must directly advance a substantial governmental interest by the least restrictive means. Moreover, Ameritech Michigan argues that AT&T's proposal is simply unfair because it protects AT&T's ability to tell the public whatever it wants about Ameritech Michigan's performance under the agreement but denies Ameritech Michigan an opportunity to respond.

The Commission finds that AT&T's proposed publicity clause should not be adopted. The Commission is not persuaded that the imposition of a prohibition on the dissemination of truthful information to the public is either a reasonable or an appropriate method to promote competition. It is the express policy of this state to promote the dissemination of truthful information to the public. Accordingly, placing an artificial restriction on Ameritech Michigan's advertising and marketing efforts is not consistent with fair play or the operation of a competitive marketplace. Therefore, the publicity clause proposed by AT&T should be rejected.

Miscellaneous Issues

Issue 55 consists of the arbitration panel's attempt to resolve a variety of miscellaneous issues. In each case, the disputed issues concern proposed contract language aimed at addressing how disputes arising under the contract should be handled. The panel's recommendations are summarized at pages 79-80 of its decision.

According to Ameritech Michigan's objections, a number of the matters covered in Issue 55 were resolved by the parties in their October 21, 1996 agreement. These matters include contract provisions 12.12.2(j), 12.12.3, 16.11, Schedule 9.2.3, and the definition of "CABS" in

Schedule 1.2. Additionally, neither of the parties expressed any objections to the arbitration panel's decisions regarding Sections 12.8.5, 12.12.2(d), 12.12.3(f), 16.6, 16.15, Schedule 10.11.1, and the concepts of conduit, dispute resolution, and permanent number portability contained in Schedule 1.2. Accordingly, through agreement or nonobjection, all but six of the miscellaneous issues appear to have been resolved.

Ameritech Michigan objected to six of the panel's recommendations. The first issue involves the bona fide request process established in Schedule 2.2, which would require Ameritech Michigan to provide AT&T with a firm price proposal and an availability date for development of certain AT&T requests for interconnection, network elements, or levels of quality within 60 days. Ameritech Michigan proposed a 120-day limit. Second, Ameritech Michigan maintains that the process for providing AT&T with a preliminary analysis of any bona fide request within 30 days of the request should be conditioned to make an exception for "extraordinary circumstances." Third, Ameritech Michigan maintains that Section 16.13 of the contract should allow it to provide AT&T with maps and records that have had confidential, proprietary information "redacted" from them. Fourth, Ameritech Michigan argues that Section 16.3.1 of the contract should not require notification "in writing" to parties having attachments on or in a structure that is about to be modified. Fifth, Ameritech Michigan objects to the definition of the term "capacity" found in Schedule 1.2, which is related to access to structure issues. Sixth, Ameritech Michigan maintains that the arbitration panel erred in adopting AT&T's proposed definition of the term "arbitrator" found in Schedule 2 of the contract for the same reason set forth in its objections to Issue 45 concerning alternative dispute resolution.

The Commission is persuaded that Ameritech Michigan's third and fourth objections to the miscellaneous issues have merit. The Commission accepts Ameritech Michigan's assertion that its maps, records, and additional information relating to its structure may contain information that is proprietary to Ameritech Michigan's business or relates to attachments of other parties with access that could be subject to confidentiality requirements. Accordingly, the interconnection agreement should provide that Ameritech Michigan may redact any such information from a map or record before providing it to AT&T so long as Ameritech Michigan agrees to make its outside plant engineers available to AT&T to clarify information about the maps and records.

Further, the Commission agrees with Ameritech Michigan that it may not always be possible to notify parties "in writing" that their attachment on or in a structure is to be modified. Certainly, written notification might not be possible in an emergency situation. Therefore, the Commission agrees with Ameritech Michigan that the notification provision should be revised to delete the "in writing" requirement, which will allow Ameritech Michigan to use other forms of communication to deliver the necessary modification.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. The parties' final offers on the issues of indemnification and limitation of liability should be rejected.

c. The parties' final offers on the issue of standards of performance should be rejected.

d. The agreements reached by the parties in their October 21, 1996 filing should be adopted.

e. Except for the indemnification, limitation of liability, and standards of performance provisions, the interconnection agreement, as adopted by the arbitration panel and as modified by this order, should be approved.

THEREFORE, IT IS ordered that:

A. The final offers of both parties on the issues of indemnification, limitation of liability, and standards of performance are rejected.

B. Except for the indemnification, limitation of liability, and standards of performance provisions, the interconnection agreement, as adopted by the arbitration panel and as modified by this order, is approved.

C. A complete copy of the interconnection agreement, as adopted by the arbitration panel and as approved by the Commission, shall be filed within ten days of the issuance of this order.

D. The parties should submit proposals on the indemnification, limitation of liability, and standards of performance issues within 30 days.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

(SEAL)

/s/ John G. Strand
Chairman

I dissent, as discussed in my
separate opinion.

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of November 26, 1996.

/s/ Dorothy Wideman
Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of AT&T COMMUNICATIONS OF MICHIGAN, INC., for arbitration to establish an interconnection agreement with Ameritech Michigan.	)	Case No. U-11151
In the matter of the petition of AMERITECH MICHIGAN for arbitration to establish an interconnection agreement with AT&T Communications of Michigan, Inc.	)	Case No. U-11152

DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on November 26, 1996 concerning order issued on same date.)

For the reasons set forth in my November 1, 1996 Dissenting Opinion in Case No. U-11138, I dissent.

John C. Shea, Commissioner